IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16711 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI MANGALDAS MISTRY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16711 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 18.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that three FIRs were filed against the petitioner before Karjan Prohibition Station, Vadodara, Bharuch prohibition station, Bharuch and Karjan Prohibition Station, Vadodara between September 2003 and October 2003. It was also alleged against the petitioner that three witnesses have rendered statements against the petitioner whose names were not disclosed. On the strength of the aforesaid registered offences and unregistered cases, the petitioner was found to be bootlegger by the detaining authority and with a view to prevent him from carrying on such illegal activities leading to a threat to public order and public health, the impugned order of detention was passed and the petitioner was detained. The petitioner has challenged the said order on various grounds. It has been contended that there was no material before the detaining authority in order to pass the order of detention. That the names of the witnesses were not disclosed to the petitioner. Therefore, his right to make effective representation has been taken away. That the representation of the petitioner was not properly complied with and that therefore, the order of detention is illegal and deserves to be quashed and set aside.

3. On receiving the petition, rule was issued and in response to the notice of rule, Ms P B Sheth, learned APP appears on behalf of the respondents. I have heard the learned Advocates for the parties and perused the papers.

4. During the course of final hearing, learned Advocate for the petitioner has argued that the petitioner has submitted his representation on 25.11.2003 placed at Annexure 'C' at page 28 wherein certain documents were demanded by the petitioner and they were not supplied to him. That the public order has not been disturbed.

5. On going through the grounds of detention, it can be gathered that three prohibition offences have been registered against the petitioner before different police stations on different dates. Looking to the nature of the offence and looking to the quantity of foreign liquor

seized from the petitioner, it would be difficult to hold that the aforesaid activities of the petitioner would lead to a threat to public order or public health. It is true that in the case of Kanubhai Zala v. State of Gujarat, reported in 1999 (2) GLH 415, the Hon'ble Supreme Court has observed that in some cases, registration of prohibition offences may lead to a threat to public health. The said decision came to be considered before this Court (Coram: Hon'ble Mr Justice N G Nandi) in Special Civil Application No.16542/2003 by order dated 26.2.2004, wherein it has been held that the detaining authority must have proper material with it in order to hold that the activities of the petitioner would lead to a threat to public order or public health. On appreciation of the facts of the case, this court came to a finding that such material was not available and, therefore, the petitioner could not be detained under the order of detention. In the present case also it can be gathered that there was no material before the detaining authority for coming to the conclusion that the activities of the petitioner would lead to a threat to public order or public health. In that view of the matter, the order of detention cannot be sustained. On that count, the detaining authority has also considered statements of three witnesses whose names have not been disclosed to the petitioner. It is well settled that when the statements of the witnesses have been considered by the detaining authority, then names of the said witnesses are required to be communicated to the detenu with a view to enable him to make effective representation against his detention. If the names are not disclosed, then the petitioner may not be in a position to make effective representation against his detention. It is true that the detaining authority has power under section 9(2) of the said Act and in exercising the said power, the detaining authority was at liberty to keep the names of the witnesses away from the petitioner's notice with a view to safeguard the interest of the witnesses. On this aspect of the case, we may refer to order dated 19.4.2000 in S.C.A. No.294/2000 (Coram: Hon'ble Mr Justice A L Dave) wherein it has been held that before considering the statement of unnamed witnesses, the detaining authority is required to verify the genuineness and correctness of the statements made by the witnesses with respect to the fear expressed by them. We do not find any credible material on record to show that such an enquiry has been undertaken by the detaining authority. In that view of the matter, statements of unnamed witnesses could not have been considered without disclosing their names. Since the names have not been disclosed, the petitioner is deprived of his right to

effectively represent his defence guaranteed under Article 22 (5) of the Constitution of India. Therefore, even on this ground, the order of detention fails. In view of the above position, the order of detention cannot be sustained in the eye of law and, therefore, it is required to be quashed.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 18.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp